Supreme Court, U.S.
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85-1471

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

BOREAL RIDGE CORPORATION, a California Corporation,

Petitioner

v.

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE, THE HONORABLE JOHN E. GABRIELLI, AND GREG TIETJEN (Real Party in Interest),

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE NEVADA SUPREME COURT

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QUESTIONS PRESENTED

1. Whether a Nevada State Court Constitutionally may assert *in personam* jurisdiction over a Nonresident California Corporation where the Plaintiff's personal injury action arose out of an accident in California and where the California Corporation's contacts with Nevada were limited to equipment and supply purchases from third parties and a few instances of advertising and where Plaintiff's cause of action did not arise out of these contacts.

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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE, THE HONORABLE JOHN E. GABRIELLI, AND GREG TIETJEN (Real Party in Interest),

Respondents.[1]

PETITION FOR A WRIT OF CERTIORARI TO THE NEVADA SUPREME COURT

Boreal Ridge Corporation,[2] a California corporation, petitions for a writ of certiorari to review the decision and order of the Nevada Supreme Court, entered December 10, 1985.

OPINIONS BELOW

The decision and order of the Nevada Supreme Court (Appendix A, *infra*, page A-1) is not reported. The order of the Second Judicial District Court of the State of Nevada (Appendix B, *infra*, pages A-2, A-3) is not reported.

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[1] The parties before the Nevada Supreme Court were the same parties fully listed in this caption.

[2] Petitioner has no parent companies, subsidiaries or affiliates.

JURISDICTION

1. The decision and order of the Nevada Supreme Court was entered on December 10, 1985 and was final by its own terms.

2. The federal question was first raised in the Second Judicial District Court of the State of Nevada by petitioner's Motion to Quash Service of Process and was raised before the Nevada Supreme Court by Petition for Writ of Prohibition.

3. The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3).

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the Constitution of the United States, Section 1, provides in pertinent part as follows:

> "... nor shall any State deprive any person of life, liberty, or property, without due process of law; ..."

STATEMENT OF THE CASE

Boreal Ridge Corporation ("Boreal") is a California corporation which owns and operates a ski area in the State of California in an area known as "Donner Summit" and which is its principal place of business. During the summertime, an amusement facility known as the "Alpine Slide" is operated at the Boreal Ridge ski area.

The real party in interest, Greg Tietjen, by complaint filed in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, alleged that he was injured while riding the Alpine Slide, and sought to hold Boreal responsible. The complaint alleged that as a result of tortious activities occurring within the State of California, the plaintiff suffered injury within the State of California. The complaint further alleged that "... Defendants were doing business in the State of Nevada, County of Washoe, and are thereby subject to the jurisdiction of this Court."

Boreal appeared specially in the district court and moved to quash service of summons on the ground that the district court lacked *in personam* jurisdiction over Boreal.

The following significant facts are a part of the record in the Nevada Supreme Court below:

1. The sole business of Boreal Ridge Corporation, is the operation of the Boreal Ridge ski area and the summertime amusement area known as the "Alpine Slide" located wholly within the State of California.

2. Boreal Ridge Corporation operates no business outside the State of California.

3. Boreal Ridge Corporation has never filed its articles of incorporation with the Secretary of State of the State of Nevada, nor has it designated any person residing in Nevada upon whom process may be served.

4. Boreal Ridge Corporation does not own any real or personal property in the State of Nevada.

5. Boreal Ridge Corporation does not lease or maintain any office, residence or place of business in the State of Nevada, and it has no agents in the State of Nevada.

6. Boreal Ridge Corporation has never maintained any bank accounts in the State of Nevada, nor has it owned stock of any kind in businesses that are incorporated in the State of Nevada or doing business in the State of Nevada.

7. Boreal Ridge Corporation has never paid taxes to the State of Nevada.

8. Boreal has very little business from residents of Nevada and predominantly draws its business from residents of the San Francisco Bay area and the Sacramento area, both in California.

9. On five isolated instances Boreal advertised in Nevada as follows:

(1) For seven and one-half minutes over a three day period in June, 1981, on radio station KOZZ, Reno, Nevada, over one year prior to the alleged accident which occurred in August, 1982;

(2) On one occasion, a 2 inch by 6 inch column appeared in *Key* magazine in September, 1981, approximately one year prior to the alleged accident;

(3) Two ads for employment, one in the fall of 1981 and one in the fall of 1982 in the *Reno Gazette*;

(4) Boreal *may* have mailed a price list to a Nevada school although the record below is inconclusive;

(5) In *North Tahoe Weekly* and *Tahoe Tourist Guide* which are California publications that may have found their way into Nevada, however, the record below is inconclusive on the specific instances and whether this occurred.

10. Boreal responded to calls from Reno, Nevada radio stations for snow conditions by either responding to the call directly or calling a radio station upon their direction.

11. Some of Boreal's employees may have been Nevada residents.

12. Boreal Ridge Corporation has obtained some supplies and equipment from Nevada businesses on occasion.

13. Boreal Ridge Corporation has never considered itself as engaging in business in the State of Nevada.

After oral argument, and presentation of evidence, the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, denied the motion of Boreal to quash service of summons and directed Boreal to answer the complaint.

Thereafter, Boreal Ridge Corporation sought and obtained an emergency stay[3] of the district court proceeding from the Nevada Supreme Court on February 3, 1984.

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[3] The order staying proceedings in the district court, which was issued on February 3, 1984, occurred prior to the time Boreal Ridge Corporation had to answer the complaint in the district court. Therefore, the special appearance in moving to quash summons by Boreal Ridge Corporation was the only appearance in the trial court and a general appearance was never made by Boreal Ridge Corporation.

Petitioner then filed its petition for a writ of prohibition before the Supreme Court of the State of Nevada on February 3, 1984 seeking a writ of prohibition. The proceeding before the Nevada Supreme Court challenged the order of the district court denying petitioner's motion to quash service of the summons and complaint.

The Nevada Supreme Court, on February 24, 1984, then ordered respondent to file an answer, including authorities against the issuance of the writ. After response by respondents, and reply by petitioner, and without oral argument, the Nevada Supreme Court then issued, on December 10, 1985, its order denying the petition of Boreal Ridge Corporation for a writ of prohibition.

Petitioner Boreal Ridge Corporation now seeks review of the denial of the petition for writ of prohibition and outright reversal of the order.

SHOWING HOW FEDERAL QUESTION WAS RAISED AND PASSED UPON

Upon receipt of the summons and complaint, Boreal Ridge Corporation appeared specially before the Second Judicial District Court of the State of Nevada in and for the County of Washoe for the sole purpose of moving the court for an order quashing service of process on the ground that the district court lacked *in personam* jurisdiction over Boreal. Specifically, petitioner raised the due process limitations imposed by the United States Constitution.

The federal question was again raised before the Nevada Supreme Court in Boreal Ridge Corporation's petition for writ of prohibition filed February 3, 1984. Again, petitioner raised the due process limitations imposed by the Fourteenth Amendment to the United States Constitution on the exercise of *in personam* jurisdiction pursuant to Nevada's "long arm statute".

REASONS FOR GRANTING THE WRIT

THE DECISION OF THE NEVADA SUPREME COURT DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN *Helicopteros Nationales de Colombia v. Hall*, 466 U.S. 408 (1984).

The Nevada Supreme Court incorrectly held that Boreal, a nonresident corporation, was subject to *in personam* jurisdiction of the Nevada courts on a cause of action unrelated to Boreal's isolated contacts with Nevada. The decision of the Nevada Supreme Court was an unconstitutional exercise of *in personam* jurisdiction which this Court should reverse as was done in *Helicopteros Nationales de Colombia v. Hall*, 466 U.S. 408 (1984) ("Helicol"); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); and *Kulko v. Superior Court*, 436 U.S. 84 (1978).

As in *Helicol*, the instant case involves the assertion of *in personam* general jurisdiction by the Nevada State courts over a California corporate defendant for a tort which occurred in the State of California where the California corporation did not have continuous and systematic general business contacts with the State of Nevada. This case therefore involves the question of "general jurisdiction" rather than "specific jurisdiction" since the suit does not arise out of or is not related to the defendant's contacts with the forum.[4]

The Nevada Supreme Court applied its decision in *Galatz v. District Court*, 100 Nev. 408, 683 P.2d 26 (1984) to deny Boreal's petition. However, *Galatz* is a case of "specific jurisdiction" rather than "general jurisdiction" which necessarily involves different considerations, as shown by *Helicol, supra*.

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[4] The distinction between "general jurisdiction" and "specific jurisdiction" was shown at footnotes 8 and 9 to *Helicol, supra*, 466 U.S. at 414. When a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum, it is exercising "general jurisdiction". If a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, the state is exercising "specific jurisdiction".

In determining whether a state court may exercise *in personam* jurisdiction over a non-resident defendant, it must determine:

1. Whether there is a statute granting jurisdiction; and

2. Whether the exercise of jurisdiction is consistent with due process. (See *World-Wide Volkswagen Corp., supra,* 444 U.S. 286 at 290.)

I
THE NEVADA STATUTE

The "long-arm" statute of Nevada is contained at Nevada Revised Statutes 14.065.[5] In its brief decision, the Nevada Supreme Court indicated that "... this statute manifests a legislative intention to reach the outer limits of federal constitutional due process" citing its previous decision in *Certain-Teed Products v. District Court,* 87 Nev. 18, 479 P.2d 781 (1971).

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[5] Nevada Revised Statute 14.065 provides in pertinent part as follows:

"2. Any person who, in person or through an agent or instrumentality, does any of the acts enumerated in this subsection thereby submits himself and, if an individual, his personal representative to the jurisdiction of the courts of this state as to any cause of action which arises from: (a) transacting any business or negotiating any commercial paper within this state; (b) committing a tortious act within this state; (c) owning, using or possessing any real property situated in this state; (d) contracting to insure any person, property or risk located within this state at the time of contracting; (e) living in the marital relationship within this state notwithstanding subsequent departure from this state, as to all obligations arising for alimony, child support or property settlement, if the other party to the marital relationship continues to reside in this state; or (f) violating N.R.S. 207.400.

3. Only causes of action arising from these enumerated acts may be asserted against a defendant in an action which jurisdiction over him is based on this section.

4. The method of service provided in this section is cumulative, and may be utilized with, after or independently of other methods of service."

In *Helicol*, this Court stated that it is not within the province of the court to determine whether the State Supreme Court has correctly interpreted its "long-arm statute", and therefore accepted the state court's holding that the limits of the statute were coextensive with those of the Due Process Clause. (See *Helicol, supra*, 466 U.S. at 413, footnote 7). Therefore, attention must be turned to the Due Process limitation.

II

THE NEVADA SUPREME COURT DID NOT APPLY "GENERAL JURISDICTION" PRINCIPLES TO BOREAL

Since this Court's decision in *International Shoe Company v. Washington*, 326 U.S. 310 (1945), the Due Process Clause of the Fourteenth Amendment has been interpreted to limit the power of a state to assert *in personam* jurisdiction over a non-resident defendant by requiring "certain minimum contacts". *International Shoe Company, supra*, 326 U.S. 310 at 316.

In *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), the Court recognized that different due process considerations are involved where the defendant's activities in the state are so substantial and continuous as to constitute residency in the state and, on the other hand, where the nonresident defendant's contacts with the state, although incidental, transitory and infrequent, gave rise to the cause of action.[6]

International Shoe teaches that while a small number of contacts between the defendant and the forum state might be a sufficient basis for the exercise of personal jurisdiction over a defendant with respect to a cause of action arising out of a defendant's activities in the forum state, a qualitatively different

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[6] The Court in *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977), reiterated that a relationship between the forum and the cause of action is required for the assertion of jurisdiction over a nonresident defendant, stating that "the relationship among the defendant, the forum and the litigation [is] . . . the central concern of the inquiry into personal jurisdiction."

relationship is required where the cause of action is unrelated to the contacts of the defendant in the forum state.

> [I]t has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there [citiations omitted] . . . To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process.

International Shoe, supra, 326 U.S. at 317.

The Nevada Supreme Court did not and could not find that the cause of action arose from Boreal's contacts with Nevada. In fact, it is difficult to determine what the court considered since it neither permitted oral argument nor gave the basis for its decision other than the two inapplicable "specific jurisdiction" cases.

The issue in this case is the same issue that was before the court in *Perkins v. Benguet Consolidated Mining Co.,* 342 U.S. 437 (1952). As the court stated the issue in *Perkins* 342 U.S. at 447:

> It remains only to consider, in more detail, the issue of whether, as a matter of federal due process, the business done in Ohio by the respondent mining company was sufficiently substantial and of such a nature as to *permit* Ohio to entertain a cause of action against a foreign corporation, where the cause of action arose from activities entirely distinct from its activities in Ohio (emphasis in original).

In vacating the decision of the Supreme Court of Ohio which held that Ohio courts could not exercise *in personam* jurisdiction over a Phillipine defendant on a cause of action arising outside Ohio, the court, in *Perkins,* emphasized that the defendant had moved its operations to Ohio during World War II and that the president of the company operated from Ohio, carrying on a "continuous and systematic" supervision of the company. Thus

the court concluded that because of the defendant's substantial and continuous activities in Ohio, "... it would not violate federal due process for Ohio either to take or decline jurisdiction of the corporation in this proceeding." *Perkins,* 342 U.S. at 448.

In *Helicol,* the *Perkins* standard was applied although the court referred to the standard as "continuous and systematic". *Helicol, supra* 466 U.S. at 416. Thus, in the context of general jurisdiction, the contacts must be continuous, systematic and substantial and the activities of Boreal were not.

III

BOREAL'S CONTACTS WERE NOT "CONTINUOUS", "SYSTEMATIC" AND "SUBSTANTIAL"

In order for a court to assert "general jurisdiction" over a defendant, the nature of the contacts with the forum state must be more than random, fortuitous, or attenuated contacts. The contacts must be of the nature and quality such that the actions by the defendant creates a deliberate and substantial connection with the forum state to indicate that the defendant has manifestly availed itself of the privilege of conducting business there. *Burger King Corp. v. Rudzewicz,* 471 U.S. ____, 85 L.Ed.2d 528, at 542 and 543 (1985).

This Court in *Helicol, supra,* examined the nature of the defendant's contacts with the State of Texas to determine whether they constituted the kind of continuous, systematic and substantial general business contacts required to satisfy the due process limitations.

Helicopteros Nationales de Colombia, S.A. ("Helicol") was a foreign corporation which owned a helicopter that crashed in Peru, resulting in the death of the planitiff's decedents. Plaintiff instituted a wrongful death action in a Texas State court against Helicol. This Court reversed the Texas Supreme Court holding that Helicol's contacts with the State of Texas were insufficient to satisfy the requirements of the due process clause of the Fourteenth Amendment.

As in the instant case, *Helicol* involved a state's assertion of general jurisdiction over a foreign corporation. The facts in *Helicol* as compared to the instant case are astonishingly similar.

As in *Helicol*, it is undisputed that Boreal Ridge Corporation does not have a place of business in Nevada, has never been licensed to do business in the state, has never filed articles of incorporation with the Secretary of State of Nevada, has never designated any person residing in Nevada upon whom process may be served, does not own any real or personal property in the State of Nevada, does not lease or maintain any office, residence or place of business in the State of Nevada, has no agents located within the State of Nevada, has never maintained any bank accounts in the State of Nevada, and has never paid taxes to the State of Nevada.

The Nevada Supreme Court erred when it based its decision on the isolated contacts of Boreal to Nevada as sufficient to support *in personam* general jurisdiction. The contacts can be summarized as follows:

(1) Occasional equipment and supplies purchases;

(2) Isolated instances of advertising;

(3) Employee residence.

Further analysis of each of these indicate that two of these three types of contacts have been previously considered by this Court as insufficient to support *in personam* jurisdiction. There have been such isolated instances of the third type of contact that it cannot in and of itself be considered as continuous or substantial as required by the *Perkins* and *Helicol* standards.

A. Equipment and Supply Purchases Are Insufficient Contacts

As in *Helicol*, Boreal's contacts with the State of Nevada did include some occasional purchases of equipment and supplies. It is clear though that these contacts are not the kinds of contacts which warrant or support an assertion of general jurisdiction. This Court stated in *Helicol*, *supra*, 466 U.S. at 418:

> In accordance with *Rosenberg*, we hold that mere purchases, even if occurring at regular intervals, are not enough to warrant a state's assertion of *in personam* jurisdiction over a non-resident corporation in a cause of action not related to those purchase transactions.

Therefore, these contacts are inconsequential.

B. Limited Advertising Was Not Continuous or Substantial

Although *Helicol* did not involve advertising within the state, nonetheless, the limited advertising obtained by Petitioner was random and occasional and therefore not supportive of an assertion of general jurisdiction. The limited advertising by Boreal in Nevada was shown *infra* at p. 3-4. These isolated instances of advertising can hardly be said to be continuous, systematic and substantial.

The constitutional principle underlying the court's statement in *Kulko v. Superior Court*, 436 U.S. 84 (1978) (a custody case involving a natural person as defendant) is equally applicable to the present case involving a nonresident corporate defendant.

> To hold such temporary visits [defendant's visit to California in 1959 on a three day military stopover on his way to Korea and a four hour stopover in 1960 on his return from Korean service] to a state a basis for the assertion of *in personam* jurisdiction over unrelated actions arising in the future would make a mockery of the limitations on state jurisdiction imposed by the Fourteenth Amendment. *Kulko, supra*, 436 U.S. at 93.

The assertion of *in personam* jurisdiction over Boreal by the Nevada court on the basis of the incidental and infrequent contacts described above with respect to a cause of action unrelated to Nevada was an unconstitutional exercise of *in personam* jurisdiction over Boreal.

C. Unilateral Activity of Employees' Residence is Not Considered

The record below indicates also that Boreal may have had employees that also maintained their residence in the State of

Nevada. However, this is of no consequence since it is clear that this is *not the activity of the defendant* that has produced a connection with the forum state.

This "unilateral activity exception" was stated in *Hansen v. Denckla,* 357 U.S. 235 at 253 (1958) as follows:

> The unilateral activity of those who claim some relation with a non-resident defendant cannot satisfy the requirement of contact with the forum state.

This reasoning has also been adopted in the most recent decision of this Court in *Burger King, supra,* 471 U.S. ____, 85 L.Ed.2d 528 at 542.

Petitioner does not control and may be constitutionally prohibited from controlling the residence of its employees. This is the very type of "unilateral activity" that cannot be bootstrapped into a "contact" with the forum state.

IV

THE NEVADA SUPREME COURT HAS UNCONSTITUTIONALLY ASSERTED IN PERSONAM GENERAL JURISDICTION

The Nevada Supreme Court has decided this case in a way which is directly in conflict with this Court's decision in *Helicopteros Nationales de Colombia v. Hall,* 466 U.S. 408 (1984), and therefore has unconstitutionally asserted *in personam* general jurisdiction over Boreal. In *World-Wide Volkswagen Corp., supra,* 444 U.S. at 293, this Court stated:

> We have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principals of interstate federalism embodied in the Constitution.

It is important for this Court to keep its decisions alive by continuing to adhere to the principals established in *International Shoe* and refined in its progeny that resulted in this Court's decision in *Helicol.* This principal is succinctly stated in *Hansen v. Denckla, supra,* 357 U.S. 251, 254:

> Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another state; even if the forum state has a strong interest in applying its law to the controversy; even if the forum state is the most convenient location for litigation, the due process clause, acting as an instrument of interstate federalism, may sometimes act to divest the state of its power to render a valid judgment.

The assertion of *in personam* jurisdiction over Boreal by the Nevada courts on the basis of the incidental and infrequent contacts described above with respect to a cause of action unrelated to Nevada was an unconstitutional exercise of *in personam* jurisdiction over Boreal in violation of federal due process and contrary to the decisions of this Court in *Helicopteros Nationales de Colombia v. Hall*, 466 U.S. 408 (1984); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945); Sup. Ct. R. 17.1(c).

CONCLUSION

The Nevada Supreme Court has decided this case involving general jurisdiction in direct conflict with this Court's previous decision in *Helicol*. To retain the vitality of this Court's decision and to maintain State court adherence to its principles, the petition for writ of certiorari should be granted.

In the alternative, this Court should grant the writ and summarily reverse the decision of the Nevada Supreme Court[7] or remand the matter to the Nevada Supreme Court for further consideration in light of *Helicol*.

Respectfully Submitted:

MICHAEL E. GRAHAM
Counsel for the Petitioner
Boreal Ridge Corporation

Dated: February 24, 1986

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[7] It is suggested that this case is so similar in nature and in fact to the case in *Helicol, supra,* that the Court may grant the petition for writ and summarily reverse the decision of the Nevada Supreme Court. (See Federal Practice and Procedure, Wright, Miller, Cooper and Gressman, Jurisdiction, Volume 16, § 4004, footnote 64, for a complete discussion and extensive case citation of summary disposition and Supreme Court Rule 23.1).

Appendix A

In the Supreme Court of the State of Nevada
No. 15448

Boreal Ridge Corporation,
Petitioner,

vs.

Second Judicial District Court of the State of Nevada,
in and for the County of Washoe,
The Honorable John E. Gabrielli, and Greg Tietjen,
Respondents.

[Filed Dec. 10, 1985]

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This original proceeding in prohibition challenges the order of the district court denying petitioner's motion to quash service of the summons and complaint. Service of process in this case was purportedly made pursuant to NRS 14.065(2), our long-arm statute.

We have previously recognized that this statute manifests a legislative intention to reach the outer limits of federal constitutional due process. *See* Certain-Teed Prods. v. District Court, 87 Nev. 18, 479 P.2d 781 (1971). Having reviewed the petition and answer on file herein, we are not persuaded the district court erred in concluding that the petitioner had sufficient contacts with Nevada to support the exercise of *in personam* jurisdiction. *See* Galatz v. District Court, 100 Nev. 408, 683 P.2d 26 (1984). Accordingly, we deny the petition.

It is so ORDERED.[1]

/s/ MOWBRAY, A.C.J.
Mowbray

/s/ GUNDERSON, J.
Gunderson

/s/ STEFFEN, J.
Steffen

/s/ YOUNG, J.
Young

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[1] The Honorable Charles E. Springer, Chief Justice, voluntarily disqualified himself from participating in this case.

Appendix B

In the Second Judicial District Court of the State of Nevada
in and for the County of Washoe

Case No. 83-1064
Dept. No. 3

Greg Tietjen,
Plaintiff,

vs.

Boreal Ridge, Inc.; Does I through X;
and Black and White Corporations, I through V,
Defendants.

[Filed Jan. 18, 1984]

ORDER

The Defendant Boreal Ridge Corporation's Special Appearance: Motion to Quash Service of Process, filed August 15, 1983, having been submitted to this Court for decision on December 15, 1983, and the Court having ordered that oral arguments on such Motion be held, and said hearing having come on regularly before this Court on January 12, 1984, and the Plaintiff being represented by Richard G. Campbell, Jr., and the Defendant being represented by Philip A. Olsen, and evidence thereupon having been presented to this Court, and the Court being fully advised in the premises, the Court hereby finds that based upon the totality of the actions of the Defendant Boreal Ridge Corporation within the State of Nevada, Boreal Ridge Corporation is within the jurisdiction of this court. The Court further finds that subjecting the Defendant to the jurisdiction of this Court is in compliance with all due process requirements. Based upon such findings, it is

HEREBY ORDERED that Defendant's Special Appearance: Motion to Quash Service of Process be and hereby is denied, and Defendant should answer the Complaint filed on behalf of Plaintiff.

SO ORDERED this 17th day of January, 1984.

/s/ JOHN E. GABRIELLI
District Court Judge

SUBMITTED BY:

/s/

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Attorney for Plaintiff

Supreme Court, U.S.
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No. 85-1471

(2)

In The
Supreme Court of the United States
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Petitioner,

v.

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE, THE HONORABLE JOHN E. GABRIELLI, and GREG TIETJEN (Real Party in Interest),

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE NEVADA SUPREME COURT

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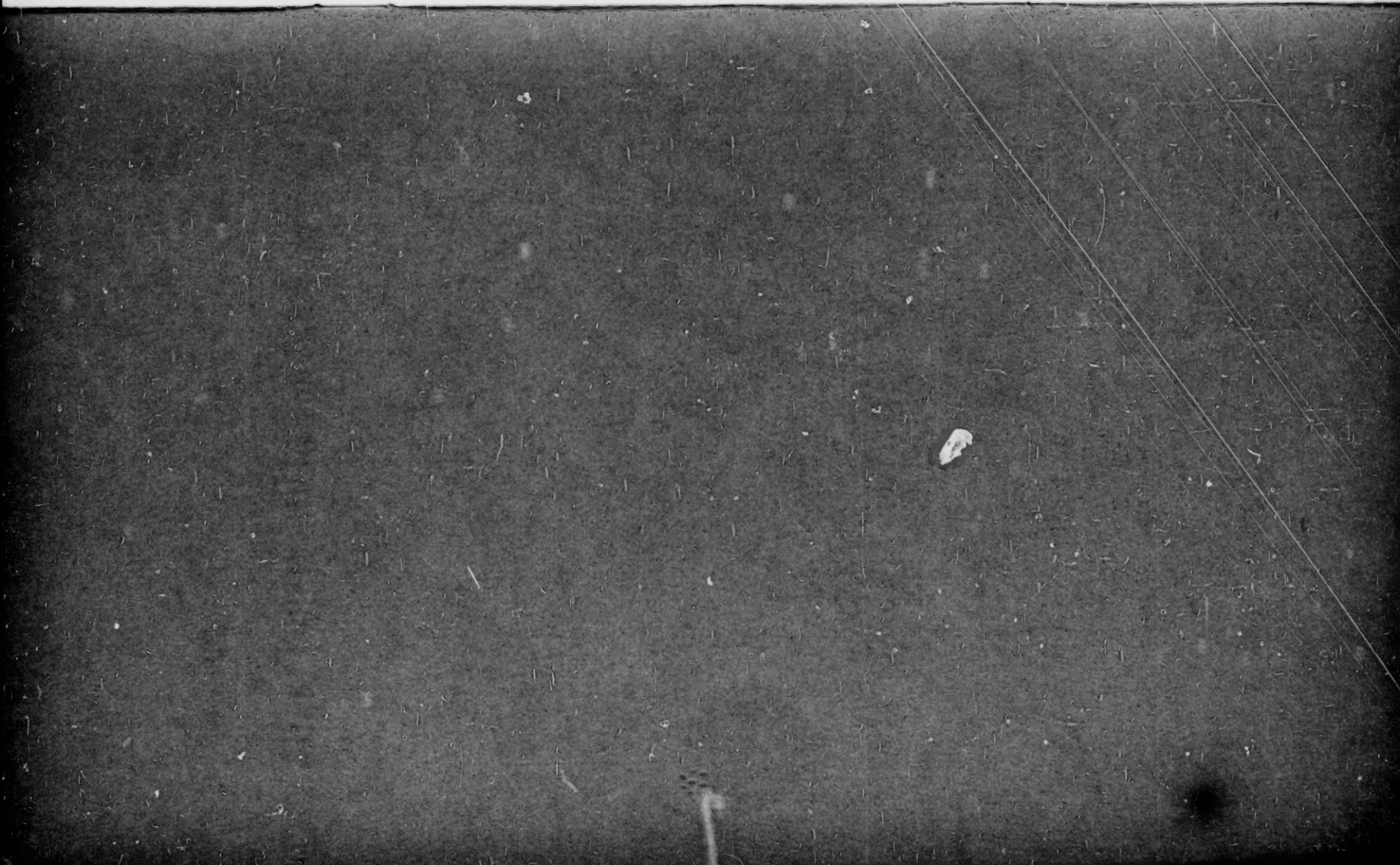

QUESTION PRESENTED

Whether the Nevada Supreme Court erred in holding Petitioner, a California corporation, had sufficient contacts with the State of Nevada to support the exercise of *in personam* jurisdiction over said corporation in Nevada State Court where said corporation had numerous and substantial contacts including major equipment purchases, supply contracts, advertising and other contacts and relationships of an ongoing and systematic nature with the forum state.

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

RESPONDENTS' BRIEF IN OPPOSITION

Respondents hereby submit this brief in opposition to the Petition for a Writ of Certiorari.

———o———

JURISDICTION

Respondents have no objections to the jurisdiction of this Court.

———o———

RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

The Fourteenth Amendment to the Constitution of the United States, Section 1:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

NEVADA REVISED STATUTE 14.065(2):

> 2. Any person who, in person or through an agent or instrumentality does any of the acts enumerated in this subsection thereby submits himself and if a natural person, his personal representative to the jurisdiction of the courts of this state as to any cause of action which arises from:
>
> (a) Transacting any business or negotiating any commercial paper within this state; . . .

STATEMENT OF THE CASE

The portion of the Statement of the Case by BOREAL outlining the circumstances of the personal injury to Respondent TIETJEN and the legal proceedings below are generally accurate. The following significant facts, part of the record below, are relevant to the jurisdictional issue central to the petition filed herein:

1. Initially, BOREAL's position was that they only engaged in a "very limited advertising effort in the State of Nevada and in fact were not doing any business in the State of Nevada."

2. The Reno-Carson City-Lake Tahoe, Nevada area is the nearest major population center located in the proximity of BOREAL's business. The Nevada state line is approximately twenty (20) miles from Petitioner's business.

3. BOREAL purchases "chair lifts", a major equipment purchase, for its operations from a Nevada company. Contract negotiations for the purchase of said "chair lifts" occur when BOREAL agents visit the Nevada company's manufacturing plant in Nevada.

4. Because of proximity and convenience, BOREAL has an ongoing equipment and parts supply account with a Nevada supply company.

5. BOREAL's advertisement in a Nevada distributed magazine contained a "two-for-one" ticket to BOREAL's "Alpine Slide" amusement facility.

6. BOREAL recruits employees from the State of Nevada and has run employment ads in a Nevada newspaper.

7. BOREAL maintains mailing lists of schools, churches and other groups located in the State of Nevada in order to solicit business from said groups.

8. BOREAL obtains maintenance for its business signs from a business within the State of Nevada.

9. BOREAL reports snow conditions to Nevada radio stations for broadcasting to Nevada residents and Petitioner advertises its facilities through Nevada radio.

10. Respondent TIETJEN has contended his cause of action arose out of BOREAL's transaction of business, in that he went to BOREAL's place of business, where he was injured, as a direct result of Petitioner's advertising the amusement facility in Nevada.

From the above facts, the Second Judicial District Court of the State of Nevada ruled that based upon the totality of BOREAL's business contacts with the State of Nevada, the forum state had jurisdiction over BOREAL. Such holding was affirmed by the Supreme Court of the State of Nevada.

———o———

STAGE AT WHICH THE FEDERAL QUESTION WAS RAISED

The federal question now presented was initially raised before the Second Judicial District Court of the State of Nevada. Said issue was subsequently raised before the Nevada Supreme Court.

———o———

ARGUMENT

I.

THE HOLDING OF THE NEVADA SUPREME COURT IS CONSISTENT WITH THE RELEVANT CASE LAW OF THIS COURT WHEN APPLIED TO THE FACTS OF THE INSTANT MATTER.

The Nevada courts below found that the facts surrounding the conduct and business contacts of BOREAL in the State of Nevada were sufficient to satisfy the jurisdictional requirements required for such assertion. Said contacts were deemed to be continuous and systematic by their very nature. Additionally, the evidence presented regarding the proximity and convenience afforded BOREAL by the State of Nevada was sufficient to establish that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Company v. Washington*, 326 U.S. 310 (1945); *Shaffer v. Heitner*, 433 U.S. 186 (1977).

While BOREAL has chosen to characterize its contacts with the State of Nevada as minimal, such view is not realistic nor persuasive. The totality of the relationship between BOREAL and the state points to a purposeful availment of Nevada's resources and its citizens.

BOREAL relies on the case of *Helicopteros Nacionales De Colombia, S. A. v. Hall*, 466 U.S. 408 (1984) (Helicol) in support of its petition. The contacts and circumstances of BOREAL's contacts with Nevada far exceed those established by the Colombian company in *Helicol*. In addition to major purchases in Nevada, BOREAL maintains an equipment and supply account, as well as business sign

maintenance in Nevada. BOREAL runs employment ads in Nevada and recruits employees from the forum state. More importantly, this is not a case, as in *Helicol*, of the forum state reaching out to another continent to assert jurisdiction. BOREAL's amusement facility is located some twenty (20) miles from Nevada, and the Reno-Carson City, Nevada population area is easily the closest major population base.

In *Burger King Corp. v. Rudzewcz*, 471 U.S. —, 85 L.Ed.2d 528 (1985) this Court held that the "fair warning" requirement necessary when a forum state seeks to assert specific jurisdiction over an out of state defendant "is satisfied if the defendant has 'purposely directed' his activities at residents of the forum." 85 L.Ed.2d at 541. While BOREAL has maintained this action is solely a general jurisdiction action, Respondent TIETJEN has maintained his injury was related to the advertisements of the BOREAL amusement facility through Nevada radio and magazines. Included in one particular advertisement was a two-for-one ticket to the very amusement TIETJEN was injured riding. There can be no question BOREAL lures Nevada residents to its facility. This Court went on to state in *Burger King, supra*:

> A State generally has a "manifest interest" in providing its residents with a convenient forum for redressing injuries inflicted by out of state actors . . . Moreover, where individuals "purposefully derive benefit" from their interstate activities, . . . it may well be unfair to allow them to escape having to account in other states for consequences that arise proximately from their activities. *Id.*, 85 L.Ed.2d at 541.

By luring residents of Nevada to their facility through advertisement and proximity, BOREAL should "reason-

ably anticipate'' litigation in Nevada. *Hanson v. Denckla,* 357 U.S. 235, 253 (1958).

———o———

CONCLUSION

The question presented by BOREAL in it's petition for certiorari has been amply addressed by this Court in the past and recently. The facts attendant to this action are amply sufficient to sustain a finding of either general or specific *in personam* jurisdiction over BOREAL in Nevada. For the foregoing reasons, it is respectfully submitted that the Nevada Supreme Court did not err below and the Petition filed by BOREAL does not warrant the granting of the Writ of Certiorari. The Petition for Writ of Certiorari should be denied.

RESPECTFULLY SUBMITTED this 28 day of April, 1986.

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No. 85-1471

In the Supreme Court

of the

United States

OCTOBER TERM, 1985

BOREAL RIDGE CORPORATION
a California Corporation,
Petitioner,

vs.

SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE,
THE HONORABLE JOHN E. GABRIELLI,
AND GREG TIETJEN (Real Party in Interest),
Respondents.

REPLY TO OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE NEVADA SUPREME COURT

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REPLY TO OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE NEVADA SUPREME COURT

PETITIONER'S REPLY TO OPPOSITION

Petitioner hereby submits this brief in reply to Respondent's Opposition to the Petition for a Writ of Certiorari.

JURISDICTION

Respondent's presented no objections to the jurisdiction of this Court.

STATEMENT OF THE CASE

Respondents have tried to link an isolated contact of BOREAL with respondent's cause of action. Upon examination, however, this is an incredible factual assumption.

Respondents state at Page 3 of their Brief, at Paragraph 10, that "Respondent TIETJEN has contended his cause of action arose out of BOREAL's transaction of business, in that he went to BOREAL's place of business, where he was injured, as a direct result of Petitioner's advertising the amusement facility in Nevada."

The only support for this statement in the record below comes from an affidavit by plaintiff, GREG TIETJEN, that states:

> That affiant is the plaintiff named in the above-entitled action. That affiant first became aware of the Alpine Slide operated by defendant BOREAL RIDGE, INC., when he heard an advertisement on Reno radio station KOZZ in June of 1981. That affiant had no knowledge of the operation of the Alpine Slide amusement ride prior to hearing the aforementioned advertisement on KOZZ radio."

Respondents have concluded that this cause of action arose out of BOREAL's transaction of business, by reasoning that TIETJEN went to BOREAL's place of business, where he was injured, as a direct result of Petitioner's advertising the amusement facility in Nevada. Yet the record below clearly shows the facts as otherwise. BOREAL admits the isolated instance of advertising on the radio for 7½ minutes over a three day period in June of 1981 *but this occurred over one year prior* to the alleged accident which occurred in August, 1982. To link the two events together is beyond belief.

The salient facts of this case are that BOREAL RIDGE CORPORATION has very little business from residents of Nevada and predominately draws its business from residents of the San Francisco Bay area and the Sacramento area, both in California and has had only random and occasional contacts in Nevada. Five isolated instances of advertising do not translate

into the continuous activity required to establish general *in personam* jurisdiction.

ARGUMENT

I

GENERAL JURISDICTION PRINCIPLES ARE APPLICABLE TO THIS CASE CONTRARY TO RESPONDENTS' ASSERTION OF SPECIFIC JURISDICTION

Petitioner BOREAL RIDGE CORPORATION still maintains that this case requires the application of "general jurisdiction" principles to BOREAL. The distinction between "general jurisdiction" and "specific jurisdiction" was shown at Footnote 8 and 9 to this Court's decision in *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984) ("Helicol"). If the suit does not arise out of the defendant's contacts with the forum, it is a case of "general jurisdiction" and if the suit arises out of the contacts with the forum, the matter is one of "specific jurisdiction".

Here, Respondent TIETJEN alleges personal injuries arising out of an accident on the Alpine Slide, a summertime amusement at BOREAL. Respondent has now tried to characterize this action for personal injuries as "arising out" of BOREAL's isolated conduct in advertising on radio station KOZZ for 7½ minutes over a three day period in June 1981, approximately one year and two months prior to the accident.

It stretches the imagination to see how this can be a case of specific jurisdiction under the circumstances. BOREAL maintains that, as a matter of law, the isolated radio advertisement *one year and two months prior to the accident* was not the cause of the accident. Since this action did not arise out of the defendant's contacts, this case should be judged by the application of general jurisdiction principles.

II

RESPONDENTS HAVE IGNORED THIS COURT'S HOLDING THAT PURCHASES OF EQUIPMENT AND SUPPLIES DO NOT SUPPORT AN ASSERTION OF GENERAL JURISDICTION

Respondents have ignored this Court's holding that occasional purchases of equipment and supplies are not the kinds of contacts which warrant or support an assertion of general jurisdiction. *Helicol,* supra, 466 U.S. at 418. This Court made clear that even if the purchases occurred at regular intervals, they are still not enough to warrant a state's assertion of *in personam* jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions. *Helicol,* supra.

III

ISOLATED OR RANDOM CONTACTS ARE INSUFFICIENT TO SUPPORT GENERAL *IN PERSONAM* JURISDICTION

Boreal has had only isolated or random contacts with the State of Nevada. In order for a Court to assert "general jurisdiction" over a defendant, the nature of the contacts with the forum state must be more than random, fortuitous, or attenuated contacts. *Burger King Corp. v. Rudzewicz,* 471 U.S. ____, 85 L.Ed.2d 528, at 542 and 543 (1985).

The record below indicates that BOREAL draws very little business from residents of the State of Nevada and predominately draws its business from residents of the San Francisco Bay area and the Sacramento area, both in California. Although BOREAL is located technically twenty miles from the Nevada State line, as the eagle flies across the Sierra Mountains, it is located within a few miles of being equidistance between the Auburn-Sacramento area and the Reno, Nevada area which are the two closest metropolitan areas.

Jurisdiction is not measured by miles. In this case, jurisdiction is determined by the contacts of the nonresident Corportion with the forum state. As shown so clearly in *Helicol,* the contacts

must be continuous and systematic. All of contacts of BOREAL with Nevada have only been random, fortuitous or attenuated.

CONCLUSION

Petitioner agrees with Respondents when they state that the question presented by BOREAL in its Petition for Writ of Certiorari has been amply addressed by this Court in the past and recently. However, the Nevada Supreme Court has decided this case involving general jurisdiction in direct conflict with this Court's decision in *Helicol.*

It is clear that BOREAL has not had contacts of a continuous and systematic nature with the State of Nevada so as to subject it to general *in personam* jurisdiction. Therefore, the Petition for Writ of Certiorari should be granted or in the alternative, this Court should grant the Writ and summarily reverse the decision of the Nevada Supreme Court or remand the matter to the Nevada Supreme Court as requested in the Petition by BOREAL.

Respectfully Submitted:

MICHAEL E. GRAHAM
Counsel for the Petitioner
Boreal Ridge Corporation

Dated: May 5, 1986